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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,247	09/18/2003	Timothy Bohrer	02-3557/3289-6	6958

8840 7590 03/25/2004

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EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/665,247	<b>Applicant(s)</b> BOHRER, TIMOTHY	
	<b>Examiner</b> Hemant M Desai	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2003.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-35, 37-62, 64 and 65 is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☒ Claim(s) 36 and 63 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant is advised that should claim 2 be found allowable, claim 3 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Several phrases in the claims are vague, indefinite and/or misleading, for example: "where the non-oriented thermoplastic material", claims 8 and 36, line 1, because it not clear whether thermoplastic material is selected from group of oriented thermoplastic or non-oriented thermoplastic.

Further, phrase "the non-oriented", claims 8 and 36, line 1; "the abutment", claim 4, line 2, lack proper antecedent basis.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 15-19, 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott et al. (4498589).

Scott et al. disclose a method of making a one-piece lidded container (10, fig. 1), which comprises providing a first length of thermoplastic material (12, fig. 3) and a second length of thermoplastic material (14, fig. 3), positioning the first and second lengths of thermoplastic material to provide a juncture of thermoplastic material (50, fig. 2) securing the first and second lengths of thermoplastic material to each other at the juncture, and forming at least a first container (12) and at least a corresponding lid (14) on the first and second lengths of thermoplastic material, which meets all the claimed limitations.

Regarding claim 2, the juncture (50) is an overlap (see fig. 5).

Regarding claims 4-5, the first and second lengths are secured along the abutment (50) and substantially the same direction as and adjacent to the abutment of thermoplastic material.

Regarding claims 16-19, the overlap of thermoplastic material is positioned between the container and corresponding lid and both lengths are of a single-layer of thermoplastic material and formed by thermoforming.

Regarding claims 24-28, the hinge (50, fig. 1) is provided between the container and corresponding lid and scoring (54, fig. 3) is provide to fold and accommodate the hinge.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (4498589) in view of Bostrom et al. (3923237).

Scott et al., as mentioned above, disclose all the limitations, except for the thermoplastic material is oriented thermoplastic. However, Bostrom et al. teaches a thermoplastic material is oriented thermoplastic (see col. 1, lines 30-32) for easy removal and re-closure of the cover (see col. 1, lines 40-43). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the thermoplastic material selected from oriented thermoplastic as taught by Bostrom et al. in the method of making a one-piece lidded container of Scott et al. for easy removal and re-closure of the cover.

8. Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (4498589).

Scott et al. disclose a one-piece lidded container (10, fig. 1), which comprises providing a first length of thermoplastic material (12, fig. 3) and a second length of thermoplastic material (14, fig. 3), positioning the first and second lengths of thermoplastic material to provide a juncture of thermoplastic material (50, fig. 2) securing the first and second lengths of thermoplastic material to each other at the

junction, and forming at least a first container (12) and at least a corresponding lid (14) on the first and second lengths of thermoplastic material.

Scott et al. do not disclose expressly the first and second lengths of thermoplastic material are of dissimilar properties.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the first and second lengths of thermoplastic material are of dissimilar properties because Applicant has not disclosed that the first and second lengths of thermoplastic material of dissimilar properties provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the material taught by Scott et al. or the first and second lengths of thermoplastic material of dissimilar properties because both kind of materials perform the same function as a container to contain the contents.

Therefore, It would have been an obvious matter of design choice to modify Scott et al. to obtain the invention as specified in claims 9-14.

9. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott et al. (4498589) in view of Sherline et al. (6571953).

Scott et al., as mentioned above, disclose all the limitations, except for the thermoplastic material is secured by ultrasonic welding or with sealant or an adhesive. However, Sherline et al. teaches an ultrasonic welding and adhesive to secure the thermoplastic materials (see col. 5, lines 20-24, 40-44 and 57-59). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was

made to secure the thermoplastic material by ultrasonic welding or with sealant or an adhesive as taught by Sherline et al. in the method of making a one-piece lidded container of Scott et al. to secure the thermoplastic material.

***Allowable Subject Matter***

10. Claims 29-35, 37-62, 64-65 are allowed.
11. Claim 36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
12. Claim 63 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hemant M. Desai*

Hemant M Desai

Examiner

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HMD